IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

TRUST PETITION NO.4 OF 2004

Haroun Alim A.R.Yusuf & Ors. ...Petitioners

Vs.

Faruq A.R. Yusuf ...Respondent

Mr.V.R.Dhond, i/b. Humranwala & Co. for Petitioners

None for Respondent

CORAM: A.S. AGUIAR,J.
DATED: 1ST OCTOBER, 2004

P.C.

. Heard the learned Advocate for the Petitioners. None appears for the Respondent, though served. Petitioners who are trustees of Sir Mohammed Yusuf Trust seek sanction of this Court for sale by the trustees of 3/6th share, right, title and interest in the land described in the Memorandum of Intent dated 18.12.2003 (Exhibit-I at page 110 of the Petition) to M/s. ESSA ASSOCIATES a sole proprietary concern of one Mr. Nisar I. Patel on the terms and conditions as set out in the offer letter dated 22nd July, 2003, as per terms and conditions of Memorandum of Intent dated 18th December, 2003. The Trust which is a private family trust now desires to convey the said property in favour of the purchasers and in view, thereof a resolution has been passed at the meeting of the Trustees held on 5th November, 2003.

All the trustees except Respondent have signed the resolution. It appears that the respondent Trustee not present at the meeting though served with notice.

2. It is the contention of the Petitioners that they had advertised sale of said land by public notice in the News papers (Exhibit-D) being the notice published in the "Free Press Journal" dated 8th July, 2003 and in "Hindustan Times" on 9th July, 2003 being (Exhibit-E). It is the contention of the Petitioners that the said sale is in the interest of the beneficiaries and beneficiaries have also given their consent for the said sale. Said consent of the beneficiaries is at page 118 of the petition (Exhibit-J to the petition). All beneficiaries are adults. In para 3 of the said consent letter they have stated that they have perused the copy of Memorandum of Intent dated 18th December, 2003 and are satisfied that the proposed sale of the property of the trust is in the interest of the beneficiaries.

3. Pursuant to the terms and conditions petitioners have received four offers for purchase of the properties of the said trust. The petitioners have accepted the tender of the highest bidder.

4. Clause 14 of the Trust Deed dated 29th April, 1929 entitiles the Mutavalis to sell the properties. Clause 14 reads as follows:-

> 14. It shall be lawful for the Mutavalis to sell or give in exchange any immovable property forming part of the Wakf properties with leave of the High Court of Bombay [previously obtained.
>
> **Clause 20 of the said Deed further says as follows :-**
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> 20. Mutavalis shall hold their ordinary meetings once at least in every month. Fourt Mutavalis shall form a quorum. The Chairman shall preside at any meeting at which he shall be present in the absence of the Chairman the Mutavalis present shall elect their own Chairman for the meeting. During the life time of the Wahif his opinion and decision shall prevail in the event of any difference of opinion among the Mutavalis and shall be binding on all Mutavalis. After the death of the Wakif every question shall be decided by majority of votes of the Mutavalis present at the meeting. In case of equality of votes the Chairman of the Meeting shall have a second or casting vote.

5. It appears that the Petitioners being trustees of the said trust have followed the due procedure for sale of the trust property. No objections are received for sale of the said property to the highest bid from any person. The tender was made pursuant to the advertisement in the Newspapers and accepted by the Petitioners. The beneficiaries have given their consent to the sale. The trustees at the said meeting have passed the resolution to sell the property as being in the interest of the trust. Respondent who was not present at the said

meeting was given notice of the said meeting. He has also been given notice of this petition but has failed to respond.

6. In the circumstances there appears to be no impediment to the Petitioners/Trustees selling the property as being in the interest of the beneficiaries.

. Petition made absolute in terms of prayer clause (a), (b), (c) and (d).

. Costs of this Petition to come out of the trust property.

. Petition stands disposed of accordingly.

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